

REMARKS

By this amendment, applicants have amended claim 5 to recite that weight average droplet size of the structured oil-in-water pre-dispersion is more than 100 to 500 microns rather than 5 to 500 microns. This is consistent with subparagraph (iii) of claim 22 where size of greater than 100 microns, with no upper limit, is recited. Claim 22 also provides antecedent basis. It is believed this amendment overcomes the rejection under 35 USC §112 and it is respectfully requested that the rejection be withdrawn in this regard.

Applicants have also amended claim 22 to recite foam volume of less than 5cc (supported at page 18, lines 12-14) to highlight that the process of the invention relates to wet-skin composition substantially free of anionic compositions and that, in such compositions, foam is substantially absent.

At page 3 of the Office Action, the Examiner rejects claims under 35 USC §103(a) as allegedly unpatentable over Glenn, Jr. (equivalent to U.S. Patent No. 6,080,708) in view of U.S. Patent No. 6,395,690 to Tsaor. Glenn, Jr. is said to disclose an aqueous phase comprising water and dispersion stabilizer (as well as 1-30 parts surfactant); and structured oil phase comprising triglycerides and structurant. The Examiner recognizes that Glenn, Jr. does not disclose passing the structured oil-in-water pre-dispersion through a screen. Tsaor is said to disclose a process to make aqueous cleanser with large oil droplets by passing cleanser through a screen. The Examiner contends it would be obvious to combine these two references. The rejection is respectfully traversed for reasons set forth below.

The claims of the subject invention define themselves over the prior art in at least the following two significant ways:

- (1) as a process, the claims require that the structured oil-in-water pre-dispersion having size of greater than 100 microns be passed through a screen of about 2000 micrometers to make wet skin composition having oil drops of 20-300 microns (steps iii and iv of claim 22); and
- (2) as a composition, the composition is a wet-skin treatment composition comprising (a) an aqueous phase having less than 1% anionic and dispersion stabilizer; and (b) a liquid oil phase structured with finely divided solid particles.

The prior art cited by the Examiner fails to teach or disclose the combination of these features either because it does not disclose the process of screening a pre-dispersion comprising large structured oil droplets altogether; and/or it fails to disclose a screening process with wet-skin compositions comprising an aqueous phase having little or no anionic (and therefore low foaming as well) and an oil phase structured by finely divided particles. Further, although the Examiner picks and chooses elements of the claim from one reference or another, there would have been no identified problem for one of ordinary skill in the art to combine the composition and process elements of the claims in exactly the way applicants have done.

Regarding U.S. Patent No. 6,080,708 to Glenn, Jr. et al. (hereinafter '708 patent), for example, the Examiner has conceded several times that the reference discloses no screening step. This is a critical component of the subject invention because, as applicants have previously noted, simply mixing separate structured oil and aqueous phases to form oil-in-water emulsions has conventionally led to "lumps", and such lumps require stirring and shear which makes oil droplet size difficult to control.

The Examiner argues that such screening step is disclosed in U.S. Patent No. 6,395,690 to Tsaur (hereinafter '690 patent), but '690 uses the screening process in compositions comprising 5 to 35% by wt. surfactant. In the examples, the surfactant comprises laureth sulfate, or sulfosuccinate or lauric acid in combination with components delivering alkali metal (e.g., anionic surfactants) in amounts far above 1%.

However, there is no defined problem in the art (e.g., unusually large particles) of cleanser compositions having more than 1% anionic to suggest use of processes used in such cleansing compositions in wet-skin compositions. To highlight this point, applicants have also amended claim 22 to define that the composition formed by the process of the subject invention has foam volume less than 5 cc, which foam volume the '690 reference would certainly exceed.

With regard to the '708 Glenn reference alone, in addition to failing to disclose a screening step:

- (1) '708 also relates to cleansing compositions (comprising at least 10% anionic in all the examples) compared to the wet skin treatment compositions of the invention;
- (2) In the '708 compositions, pre-screened emulsions (since there is no screening, this is in fact the final emulsion) have lipid droplets ranging from 0.1 to 100 microns (column 13, lines 59-60) and preferably at least 40% from 5 to 25 microns; when compositions of our invention are made, the average droplet size of the pre-screened composition is greater than 100; there is thus clearly no need or incentive to provide a screen step for the compositions of '708 since these compositions don't have the larger particles of our invention;
- (3) Further to point (2), '708 does not disclose oil which must be structured with finely divided particles as in claim 22, subparagraph (ii) of our invention; it is this structured oil phase, when mixed with aqueous phase which helps form the large droplet (over 100 microns) oil-in-water dispersion.

In short, '708 discloses no screening step, does not form large drop oil in the emulsion and provides no reason for one of ordinary skill in the art to want to screen such compositions. There is simply no reason, except in hindsight (and even there, it is not clear what the benefit would be!) to use a screening process step in the '708

process. That is, there is no reason (no problem in '708) to combine '708 and '690 references.

Referring again to the '690 reference, this clearly relates to cleanser compositions (comprising 5 to 35% surfactant) and not to wet-skin compositions which must have less than 1% anionic. Further, as noted, '690 compositions would have far higher foam value since the surfactants would provide such foam. By contrast, applicants have amended claim 22 as noted to recite foam volume of less than 5 cc measured by solution shaker test.

Thus, both these references relate to different compositions (higher foaming, cleanser compositions); it would not be obvious to combine one with the other (e.g., '708 has smaller oil particles and would not require screening), and, even if combined, because of differences in compositions and foam, one would not obtain the low-foaming wet skin compositions of the subject invention anyway.

With regard to rejection of claims 19 and 21 under 35 USC §103(a) over '708 and '690 and further in view of U.S. Patent No. 5,004,598 to Lochhead, '708 and '690 are not combinable for reasons noted already. '708 and Lochhead, as discussed in previous prosecution, both disclose methods of emulsion preparation involving simple mixing oil and water phases and there is no screening involved whatsoever. Further, as with the '708 reference, there is no reason or problem solved to suggest use of a screening method in Lochhead because there is no issue of large size particles and no problem in need of addressing (e.g., converting large size pre-dispersion particles to small size). Again, the largest size particle range referred to in Lochhead is 10 to 100 microns (column 9, lines 32-33), whereas the droplets of the subject invention are over 100 microns.

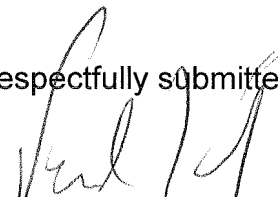
In summary, there is no reason to apply the screening method to low-foam, wet-skin compositions based on '708 or Lochhead. These references have no problem which would suggest use of a process to form smaller drop emulsions. In addition, the

'690 reference itself relates to high surfactant, high foam compositions. There is no reason to combine these references and to pick and choose elements from for each to obtain the claims of the subject invention.

In view of the amendments and remarks above, it is respectfully requested that the Examiner withdraw all rejections of the claims and that claims, as amended, be allowed.

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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